

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**

**VINCENT C. GRAY**  
**MAYOR**



**LISA MARÍA MALLORY**  
**DIRECTOR**

**COMPENSATION REVIEW BOARD**

**CRB No. 10-138**

**JUANITA IRVING,**  
**Claimant–Respondent,**

**v.**

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,**  
**Self-Insured Employer—Petitioner**

Appeal of a May 26, 2010 Compensation Order by  
Administrative Law Judge Belva D. Newsome  
AHD No. PBL 08-056B, DCP No. 013894

Kirk D. Williams, Esquire, for the Claimant/Respondent  
Pamela L. Smith, Esquire, for the Employer/Petitioner

Before: HENRY W. MCCOY and MELISSA LIN JONES, *Administrative Appeals Judges*, and  
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

HENRY W. MCCOY, *Administrative Appeals Judge*, for the Compensation Review Board.

**DISMISSAL ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant was working as a teacher for Employer on May 31, 2001 when she was pushed into the frame of an elevator. Claimant sustained injury to her head, neck, and back. The Disability Compensation Program (DCP)<sup>1</sup> accepted Claimant's claim on June 20, 2001 and paid disability benefits until an August 28, 2001 Notice of Determination discontinued that compensation after an independent medical evaluation (IME) by Dr. Steven Hughes released Claimant to return to work without restrictions. Claimant filed a timely request for reconsideration.

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<sup>1</sup> Effective October 1, 2010, the Disability Compensation Program's name was changed to the Public Sector Workers' Compensation Program (PSWCP) pursuant to the Fiscal Year 2011 Budget Support Act of 2010.

On December 1, 2003, DCP issued a Reconsideration Final Order reversing the claims examiner's decision and granting Claimant's request to have her temporary total disability benefits and medical benefits reinstated retroactive to August 14, 2001. The order stated that Claimant's benefits were to continue for those periods during which Claimant could demonstrate that she remained disabled.

Almost five years after the issuance of the Reconsideration Final Order, Claimant filed an Application for Formal Hearing (AFH). A formal hearing was held on July 16, 2008 before Administrative Law Judge (ALJ) Fred D. Carney, Jr., where Claimant sought temporary total disability benefits and medical expenses from August 14, 2001 to the date of the formal hearing and continuing. On February 24, 2009, ALJ Carney issued an Order dismissing Claimant's AFH for failure to present an award of benefits over which he had jurisdiction. This Order was not appealed.

On or about April 1, 2009, Claimant filed another AFH, which was assigned to ALJ Belva D. Newsome. Claimant requested temporary total disability benefits from August 14, 2001 to January 31, 2008 and medical expenses. In a May 7, 2010 Order, ALJ Newsome ordered Employer to pay outstanding medical bills in the amount of \$51,854.00, or issue a Notice of Determination denying the outstanding medical bills as not causally related. Employer filed a timely appeal on June 7, 2010.

In that appeal, Employer requested that the May 7, 2010 Order be vacated as not being in accordance with the law and an abuse of discretion. Specifically, Employer argued that the May 7, 2010 Order was issued in contravention of the law of the case as established by ALJ Carney's February 24, 2009 Order.

As the May 7, 2010 Order by ALJ Newsome gave Employer a May 19, 2010 deadline to pay the outstanding medical bills or issue a Notice of Determination and that date transpired without either action being taken and also prior to the June 7, 2010 Application for Review of the Order filed by Employer, the ALJ proceeded to issue a Compensation Order (CO) on May 26, 2010. Using the testimony and evidence from formal hearings held on July 22, 2009, January 13, 2010, and March 15, 2010, the ALJ determined that Claimant was entitled to temporary total disability from December 1, 2003 to the present and continuing; payment of causally related medical benefits from June 4, 2001 through July 15, 2005; and, causally related medicals.<sup>2</sup> It is from this CO that Employer brings the instant appeal. There is no record of Claimant filing an opposition.

On February 3, 2012, the Compensation Review Board (CRB) issued a Decision and Remand Order of ALJ Newsome's May 7, 2010 Order where it agreed with Employer's request to vacate, stating:

The law of the case doctrine recognizes that "once the court has decided a point in a case, that point becomes and remains settled unless it is reversed or modified by a higher court." (Citation omitted) On February 24, 2009, ALJ Carney dismissed Ms. Irving's Application for Formal Hearing because the parties had not presented an award of benefits over which he

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<sup>2</sup> *Irving v. DCPS*, AHD No. PBL 08-056B, DCP No. 013894 (May 26, 2010).

had jurisdiction. No such award was presented to ALJ Newsome before she held three formal hearings on the same issues presented to ALJ Carney or before she issued the May 7, 2010 Order directing Petitioner to either pay the allegedly outstanding medical expenses or issue a Notice of Determination.

Ms. Irving's position that she is entitled to a formal hearing to adjudicate her request for temporary total disability compensation benefits from August 14, 2001 and medical expenses has been resolved by ALJ Carney's Order which has become final. ALJ Newsome was without authority to reject the procedural posture created by ALJ Carney's Order.

Furthermore, it is DCP, not Petitioner, that issues Notices of Determination, and we are unaware of any authority that permits an ALJ to issue any directive to the DCP.<sup>3</sup>

The CRB concluded that the May 7, 2010 Order was not in accordance with the law and that ALJ Newsome had exceeded her authority by rendering a decision ordering the payment of the outstanding medical bills. Accordingly, the May 7, 2010 Order was vacated and the matter remanded with instructions to dismiss the AFH.<sup>4</sup> On February 9, 2012, ALJ Newsome issued a Compensation Order on Remand dismissing the AFH.<sup>5</sup>

#### ANALYSIS

The CRB issued a Decision and Remand Order (DRO) on February 3, 2012 which vacated ALJ Newsome's May 7, 2010 Order because the law of the case as established by the February 24, 2009 Order from ALJ Carney had dismissed Claimant's prior AFH for failure to present an award of benefits over which he had jurisdiction, *i.e.*, DCP had not issued a Notice of Determination. As the CRB ruled in vacating and remanding the May 7, 2010 Order, "ALJ Newsome was without authority to reject the procedural posture created by ALJ Carney's Order." The DRO instructed that Claimant's AFH should be dismissed and ALJ Newsome did so on February 9, 2012.

During the pendency of the appeal of the May 7, 2010 Order and the February 3, 2012 DRO, ALJ Newsome issued the May 26, 2010 CO now under review. However, the February 9, 2012 issuance of the COR dismissing Claimant's April 2009 AFH has effectively rendered the May 26, 2010 CO a nullity and likewise rendered Employer's arguments challenging the efficacy of that CO moot. But for the sequence of events in this matter, there would have been no CO following the dismissal of the AFH.

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<sup>3</sup> *Irving v. DCPS*, CRB No. 10-130, AHD No. PBL 08-056B, DCP No. 013894 (February 3, 2012), at p. 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Irving v. DCPS*, AHD No. PBL 08-056B, DCP No. 013894 (February 9, 2012).

The resolution of the instant matter is found in the CRB's February 3, 2012 Decision and Remand Order which vacated the May 7, 2010 Order and ordered the dismissal of Claimant's April 2009 AFH. On February 9, 2012, Claimant's application was dismissed. Accordingly, there was no legal basis for the issuance of the May 26, 2010 CO and the subsequent appeal.

#### **CONCLUSION AND ORDER**

Claimant's April 2009 AFH was dismissed on February 9, 2010 rendering the Compensation Order of May 26, 2010 a nullity. Insofar as Employer has appealed a CO that for all practical purposes does not exist, the CRB *sua sponte* hereby dismisses with prejudice Employer's June 7, 2010 AFR.

FOR THE COMPENSATION REVIEW BOARD:

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HENRY W. MCCOY  
Administrative Appeals Judge

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June 4, 2013  
DATE